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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,361	02/18/2000	Marc Howard Spinoza	604-540	8242

23117            7590            04/08/2003

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[REDACTED]  
EXAMINER

SERKE, CATHERINE

ART UNIT	PAPER NUMBER
3763	12

DATE MAILED: 04/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.Y.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/506,361	SPINOZA, MARC HOWARD
	Examiner	Art Unit
	Catherine Serke	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 21 January 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 13-20,31-36,38,39 and 43 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-18,31-36,38,39 and 43 is/are rejected.
- 7) Claim(s) 19 and 20 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-18 and 31-36,38 are rejected under 35 U.S.C. 102(b) as being anticipated by Shorey et al (GB '372).

Shorey discloses a fastener comprising a sleeve of variable length that include attachment means in the form of one or more loops. Each loop is formed by doubling over the sleeve. The attachment means also include other means in the form of a support member (see spec. ref. below). The sleeve has a mesh woven filamentary wall (see figure 1) that has a plurality of openings. An opening is formed between the loop so that a line/tube may pass through the wall and into the lumen of the sleeve. See figure 1 and page 2 lines 59-65 of the specification. The sleeve is disclosed for securing a cable and therefore is capable of securing a tube to a patient.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shorey.

Shorey meets the claim limitations as described above but fails to include the combination of a tube and the fastener above. Since a tube is analogous in structure to a computer cable line, it would have been obvious to secure a tube to a patient utilizing the cable grip of Shorey. It is well known that patients in today's hospitals are often attached to portable machinery. In this case, the patient has to be mindful of not pulling out for example I.V. lines and power supply cables. Therefore, it is common practice to affix fluid tubing lines and power cable cords to patient's arms utilizing adhesive connections. Utilizing this same rationale and motivation, it would have been obvious to use the cable grip to attach a tube of any kind (I.V. or a power cable) to an ambulatory patient in a hospital to provide the patient with enhanced safety from accidentally detachment.

Shorey meets the claim limitations as described above but fails to include instructions. At the time of the invention, it would have been obvious to include instructions. The motivation for the incorporation would have been in order to enhance the usability of the grip of Shorey.

#### *Allowable Subject Matter*

Claims 19-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

In response to applicant's arguments, the recitation "for securing a tube to a patient" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In this case, the invention is a fastener and not a tube. The body of the claim positively recites only limitations of the fastener structure. The structure as claimed only has to be **capable** of gripping a tube. When "capable" language is used in a claim it is treated functionally and as long as the structure disclosed in the prior art can perform the function as claimed it meets the limitation of the claim. The claims as they stand are extremely broad and the intended use of the prior art does not have to match that of the instant invention.

Regarding applicant's allegation that "Shorey has nothing whatsoever to do with tubes", the examiner reminds applicant that presently most of the claims are drawn to a fastener and not a tube. As explained above, the fact that Shorey grips a cable and the instant invention grips a tube is irrelevant. If the novelty of applicant's invention is dependant on a tube, then the examiner highly recommends that applicant positively recite the tube and add other structural limitations of the invention into the claims to define over the prior art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Serke whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Catherine Serke *ds.*  
April 7, 2003



BRIAN L. CASLER  
SUPERVISORY PATENT EXAMINER  
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